IN THE HIGH COURT OF DELHI

RSA No.135/2007

Delhi Development Authority ..... Appellant
! through: Ms.Sangeeta Chandra, Advocate.

VERSUS

$ Rajindra Properties & Industries ..... Respondent
^ through: Mr.Rajesh Aggarwal, Advocate.

% DATE OF DECISION: 06.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**(Oral)
*

1. First appeal filed by DDA was delayed by 40 days. The appeal was accompanied by an application under Section 5 of the Limitation Act. Learned Appellate Judge has opined that sufficient cause was not shown and hence delay in filing the appeal was not condoned. The result was that DDA's application under Section 5 of the Limitation Act was dismissed. As a consequence the appeal was dismissed as time barred.

2. Really speaking DDA ought not to have filed a regular second appeal. The order which had to be challenged was the order dismissing application filed by DDA under Section

5 of the Limitation Act. Order dismissing the first appeal was a consequential order dismissing the appeal as barred by limitation.

3. Learned counsel for the parties state that the instant appeal may be treated as a petition laying a challenge to the order dated 6.3.2007 dismissing application filed by DDA under Section 5 of the Limitation Act.

4. The appeal in question along with the application seeking delay to be condoned was filed on 13.7.2006. The judgment and decree which was challenged is dated 24.4.2006.

5. The chronology of milestones between 24.04.2006 and 13.7.2006 as explained by DDA may be noted in a tabular form. They read as under :-

24-4-06	The judgment was pronounced by the Trial court.
26-4-06	The certified copy was applied.
29-4-06	The certified copy was prepared by the Registry.
3-5-06	Senior Law Officer (Trial Court) forwarded the file along with the certified copy of the judgment to Sr. Law Officer (Land Disposal).
4-5-06	The file was received in the office of Sr. Law Officer (LD)
5-5-06	Sr. Law Officer (LD) gave his opinion on the point of filing of an appeal.
11-5-06	The file was received in the office of Director (Commercial Lands) through the office of Dy. Director (CL) with the detailed note.
12-5-06	The file was marked to commissioner (Land Disposal), who approved the same and then the file was marked to CLA.

15-5-06	The file was received in the office of CLA.
22-5-06	Dy. CLA again marked the file to SLO (LD) for opinion.
23-5-06	The file was received in the office of SLO (LD) and on same day, it was returned with a note that he had already expressed his opinion on 5-5-06. The file was returned on the same day.
24-5-06	The matter was examined by Dy. CLA and recommendation was made for filing of an appeal.
25-5-06	The file was received in the office of CLA.
30-5-06	The matter was entrusted to the Panel Lawyer for filing an appeal.
14-6-06	The file was handed over in the office of Panel Lawyer, during summer vacation. However, the Counsel was out of station and was returned only on 1-7-2006.
10-7-06	The appeal was drafted by the concerned Counsel and was sent for signatures.
13-7-06	The appeal was filed before the First Appellate Court.

6. Reasons which have weighed with the learned Appellate Judge may be noted in the language of the learned Judge herself. It has been opined as under:-

> "23. I have given my considerable thought to the submissions put forth by Ld. Counsel for parties and carefully perused the record. The perusal of record reveals that this application is supported by an affidavit of Sh. Yashpal Garg, Director (Commercial), DDA. It is clear that the impugned judgment was passed on 24/4/2006 and on 26/4/2006, an application was moved for obtaining certified copy, which was prepared on 29/4/2006. Three days time for obtaining certified copy has to be deducted. There is no explanation from 30/4/2006 till 02/5/2006 when LA, Tis Hazari submitted the file before SLA(TC). The time taken by SLO(TC) to submit the file before SLO(LD) is two days. It has not been explained why it was not

submitted immediately. After that there is gap of seven days till report was submitted to Director(CL). Satisfactory/sufficient reason in this delay has been explained. After that from 12/5/2006 for about ten days i.e. 22/5/2006, file could not be put before Commissioner(Lands). What to talk of cogent/sufficient reason, no reasons has been explained from 12/5/2006 till 22/5/2006 for movement of file from Director (CL) to Commissioner (Lands). After this on 30/5/2006, after gap of eight days, panel lawyer was appointment. Thee is no such explanation regarding taking eight days' time even for appointment of panel lawyer. After that it took fourteen days by department to hand over the file to panel lawyer on 14/6/2006. These fourteen days' delay has not been explained in any manner. It has further been submitted that Ld. Counsel for appellant was out of station to attend marriage of his relative and came back on 01/7/2006. Neither there is any affidavit of Ld. Counsel for appellant supporting this averment nor any detail has been mentioned. It has not been mentioned regarding the place/station where Ld. Counsel had gone and the relationship also. Even the date of marriage has not been mentioned. Even sufficient reason has not been explained for filing the appeal on 13/7/2006, after coming back of ld. Counsel for appellant on 01/7/2006.

24. It is clear that sufficient cause has not been explained for such delay. At the most the appeal after deducting period for obtaining certified copy should have been filed by 23/5/2006, but it has been filed on 13/7/2006. There is delay of about forty days in filing the appeal. This delay as mentioned above, has not been explained properly. It is well settled proposition of law that it is not the period of delay which has to be considered while deciding such application, but sufficient reasons to be explained. There should be sufficient cause to be explained by the applicant, which compelled him from filing of the appeal after lapse of period of limitation."

7. A perusal of the reasons recorded by the learned

Appellate Judge show that the gap between 12.5.2006 to 22.5.2006 (10 days), further gap between 30.5.2006 to 14.6.2006 (14 days) and the gap between 1.7.2006 to 13.7.2006 (12 days) has been held as not sufficiently explained.

8. Various judicial pronouncements pertaining to approach to be adopted by the courts while dealing with applications for delay to be condoned have been noted by the learned Appellate Judge.

9. I do not intend to make a catalogue of various judicial pronouncements nor do I intend to pen down a lengthy order stating as to which judgment has been followed by which and which judgment has been explained or dissented from in which.

10. The principles of law which guide the court in considering applications which seek to show sufficiency of cause for a default may succinctly be stated as under :-

(A) Since processual laws are subservient to the substantive laws, unless the compelling language of a processual law leaves no scope for a contrary interpretation, a processual law must be construed in a manner which subserves the purpose of the substantive law.

(B) No party is presumed to not enforce the statutory rights

available to the party. Meaning thereby, the consideration must begin with a presumption in favour of the bona fides of the concerned party.

(C) Whenever there is delay there is bound to be some negligence. Sans negligence, there would never be a delay resulting in a default. Thus, the issue has not to be looked with reference to negligence alone but with reference to the backdrop facts resulting in delay or default as the case may be.

(D) Each day's delay has not to be considered; meaning thereby, pedantic approach has not to be adopted by the Courts. The pleadings in the concerned application have to be read liberally and pragmatically.

(E) The pragmatic approach requires the court to see whether facts laid before the court evidence a desire of the party to exercise its statutory rights or not. Meaning thereby, court has to look to such facts wherefrom it can be gathered that the party was desirous of exercising its statutory right and was taking steps in said direction.

(F) As against a living human being, where the party is a juristic entity, the court has to be conscious to the fact that the juristic entity acts through a hierarchy of living human beings and the file has to travel various tiers as per the administrative hierarchy in the department.

(G) Even if the delay is excessive that by itself would not be sufficient to throw out a claim which otherwise is meritorious and if the litigant is an instrumentality of the State and the cause which is being espoused by it is as the custodian of public property, due weightage has to be given to said fact.

11. With the afore-said guiding principles I re-visit the chronology of facts noted here-in-above.

12. The judgment and the decree is dated 24.4.2006. Promptness was shown in exercising the appellate remedy. Certified copy was applied for on 26.4.2006. It was received on 29.4.2006 and was promptly dispatched to the Senior Law Officer (LD) on 3.5.2006. The very next day it was received in the office of the Senior Law Officer who gave an opinion that appeal be filed. The file was received by the Director (Commercial Lands) on 11.5.2006. It has to be noted that 5.5.2006 was a Friday. 6th and 7th May were Saturday and Sunday. Offices of DDA were closed.

13. Thus, the first gap stated to be unexplained as per learned Appellate Judge is explainable. Even otherwise, as noted here-in-above, while considering issue of sufficient cause in belated filing of an appeal each day's delay has not to be noted. A broad overview of the facts has to be in the vision of the court.

14. The Director (Commercial Lands) recorded his opinion and transmitted the file to Commissioner (Land Disposal) on 12.5.2006. After penning down his note he sent the file to the Chief Legal Advisor on 15.5.2006. The file was processed by the Deputy Chief Legal Advisor on 22.5.2006.

15. The second gap of 7 days noted by the learned Judge, i.e. between 15.5.2006 and 22.5.2006 is explainable on account of the fact that 2 out of the 7 days in between happened to be a Saturday and the Sunday. Thereafter, the file was immediately processed on 23.5.2006 and appeal was recommended to be filed on 24.5.2006. The file was received back in the office of the Chief Legal Advisor on 25.5.2006. It happened to be a Thursday. The day next after, happened to be a Saturday, following next by a Sunday. Meaning thereby that between 25.5.2006 and 30.5.2006, 2 days were non-working days.

16. The courts closed for summer vacations on 3.6.2006. Obviously, DDA had a problem in locating the counsel who was not in station. File was handed over in the office of the panel lawyer during summer vacations.

17. Counsel returned on 1.7.2006.

18. Obviously, the counsel took some time to settle down not only to the grinding heat of Delhi but even to the

work schedule after spending time in the hills. In any case, counsel's negligence should not visit DDA with penal consequences.

19. The appeal was prepared on 10.7.2006 and was filed on 13.7.2006.

20. At every stage DDA has shown a desire to bona fide prosecute its statutory right to file the appeal.

21. Within the contours of the requirements of law I hold that sufficient facts are brought on record entitling DDA to have the the delay condoned in filing the first appeal.

22. The appeal is accordingly allowed.

23. Order dated 6.3.2007 passed by the learned Additional District Judge is set aside and application filed by DDA under Section 5 of the Limitation Act praying that delay in filing the appeal be condoned is allowed. Delay in filing the first appeal is condoned.

24. RCA No.29/2006 is restored to the file of the learned Additional District Judge. The same would be decided in accordance with law and on merits.

25. Parties are directed to appear before the learned Additional District Judge on 19.12.2007.

26. Registry is directed to supply a certified copy of the present order to learned counsel for the appellant. On the

certified copy of the present order being produced learned Judge would restore the appeal. If need be, a formal application will be filed by the appellant.

27. No costs.

December 06, 2007 **PRADEEP NANDRAJOG, J.**
vg